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[Home](#) > Memorandum Decision re Motion to Compel

Tuesday, September 18, 2001

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF CALIFORNIA

Plaintiffs' application for an order directing the sale of Defendants' dwelling house in satisfaction of Plaintiffs' judgment lien came for hearing on July 31, 2001. Randall Crane appeared for Plaintiffs Raymond and Sue Cannon. Richard Seim appeared for Defendant Marilyn Munsterman (Defendant). Upon due consideration, I determine that the application should be denied because a sale "would not be likely to produce a bid sufficient to satisfy any part of the amount due on the judgment" Cal. C.C.P. 704.780(b).

FACTS

Plaintiffs obtained a nondischargeable judgment against Henry Munsterman in 1989. Mr. Munsterman met Defendant in 1992 and they were married a year later. Henry and Marilyn Munsterman purchased the residence in question in 1997. They took title as "Henry W. Munsterman and Marilyn Munsterman, husband and wife, as joint tenants." The property is subject to a deed of trust, which the Munstermans signed as "husband and wife," but which did not specify that they held the property as joint tenants.

Plaintiffs renewed the judgment in September 1999 and recorded an abstract of judgment in October 1999. Henry Munsterman conveyed his entire interest in the residence to Marilyn as her sole and separate property via an interspousal transfer grant deed recorded March 20, 2000.

At the hearing, Plaintiffs introduced evidence that the fair market value of the residence is \$365,000, and that the balance due under the deed of trust is \$171,130. Plaintiffs concede that Defendants are entitled to a homestead exemption of \$75,000. The only evidence Plaintiffs submitted as to whether the Munstermans owned the residence as joint tenants or

community property was the original grant deed and the deed of trust. Although Plaintiffs' counsel stated that Defendant Marilyn Munsterman claimed the residence was community property in the course of her marriage dissolution proceedings, he introduced no admissible evidence to that effect.

DISCUSSION

A. Is the Residence Held as Community Property or in Joint Tenancy?

Defendant argues the form of title specified in the grant deed (joint tenancy) should control. Plaintiffs argue that the property is presumed to be community property pursuant to section 760 of the California Family Code, which provides: "Except as otherwise provided by statute, all property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state is community property." Defendant's argument is more persuasive.


Section 760 notwithstanding, the residence is presumed to be held in joint tenancy, because that is the form in which title was taken. Section 760 of the Family Code states that property acquired during marriage is community property "except as otherwise provided by statute." Section 662 of the Evidence Code provides: "The owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof." Section 662 has been interpreted to create a presumption that property acquired by husband and wife as joint tenants is held in joint tenancy. See In re Marriage of Haines, 33 Cal. App 4th 277, 291 (1995); cf. In re Marriage of Lucas, 27 Cal. 3d 808, 814-15 (1980)(recognizing common law presumption for form of title). That the California Legislature intended the form of title to control in proceedings between creditors and the married couple is demonstrated in section 2581 of the Family Code, which states that property in which a husband and wife hold title as joint tenants shall be considered community property only "[f]or the purpose of division of property on dissolution of marriage"

Plaintiffs did not rebut the presumption of joint tenancy created by the form of title in the grant deed. The sole admissible evidence introduced by plaintiffs was the deed of trust that the Munstermans signed as "husband and wife." This does not evince an intent to transmute the residence into community property, because the deed of trust was executed solely for the purpose of obtaining a loan, not for the purpose of defining the form of ownership of the property. Plaintiffs' counsel stated that Marilyn Munsterman listed the residence as community property during the couple's marital dissolution proceedings, but introduced no admissible evidence supporting that argument. Introduction of such evidence would not, however, have made any difference. Because a residence owned by a married couple as joint tenants is deemed community property for dissolution purposes, such a claim does not show that the couple did not intend to take title as joint tenants. Abbett Electric Corp. v. Storek, 22 Cal. App. 4th 1460, 1467-68 (1994). Plaintiffs' rebuttal evidence also fails because the Munstermans had an obvious reason not to take title as community property -- Henry was liable for a large debt at the time they acquired the property. If the couple had taken title as community property, the entire property would have been liable for that judgment. Cal.

Family Code § 910.

There is no reason to continue the trial to another date to permit Plaintiffs to introduce additional testimony regarding the form of ownership. Plaintiffs' counsel was aware that the grant deed stated that the property was held in joint tenancy, and his trial brief reflects that he was aware of the need to rebut the presumption created by that deed. See Reply of Judgement Creditor, filed April 5, 2001, at 4-5. Although the court suggested that some of the issues raised by Defendant at the hearing constituted an undue surprise to Plaintiffs, there was no undue surprise to Plaintiffs regarding any question related to the nature of Defendant's interest in the residence.

B. Calculation of Likely Amount of Proceeds of Sale. A judgment creditor cannot compel the sale of the judgment debtor's homestead if a sale "would not be likely to produce a bid sufficient to satisfy any part of the amount due on the judgment pursuant to Section 704.800." Cal. C.C.P. § 704.790 (b). Application of sale proceeds is governed by section 704.800(a), which provides that both the mortgage and the homestead exemption must be paid in full before any proceeds may be paid to the judgment creditor. Where, as here, the judgment debtor holds the property as a joint tenant, only the judgment debtor's one-half interest may be sold to satisfy the judgment. Schoenfeld v. Norberg, 11 Cal. App. 3d 755, 760 (1970). In that circumstance, the mortgage and homestead exemption must be paid in full from the sale of the judgment debtor's one-half interest before any proceeds may be used to pay the judgment lien. Id. at 764-66.

Plaintiffs cannot compel the sale of Defendant's residence at this time. It is undisputed that the current fair market value of Defendant's residence is no more than \$365,000, that the current balance on the deed of trust is \$171,000, and that Defendants are entitled to a \$75,000 homestead exemption. For the reasons set forth in the previous section of this memorandum, the judgment debtor has only a one-half interest in the residence as a joint tenant. Thus, a sale of the judgment debtor's interest would not produce any funds to pay Plaintiffs' judgment lien: 

CONCLUSION

Plaintiffs' motion to compel the sale of Defendant's residence is denied.

Dated: September 6, 2001

Thomas E. Carlson United States Bankruptcy Judge

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